

Professional legal information, services, and education

September 2021

An Ohio Perspective on #FreeBritney

By John R. Harrison, Ulmer & Berne LLP

I have been reading with a personal and professional interest the story of Britney Spears and her fight against her conservatorship. I join the many voices in commenting on a situation we all know little about personally, but I have a professional perspective to share.

As one of the lead attorneys in the Supreme Court of Ohio's *McQueen* case,^[i] which affirmed the right of a person under guardianship to have independent legal counsel when the guardianship is under review, one aspect of the Spears conservatorship drama has really bothered me. Spears recently testified that she did not know she could go to court to stand up for her rights.^[ii] Could that possibly be true? It is certainly possible she was informed of her rights early on and either was not in a mental state to absorb that information or simply forgot. On the other hand, once the conservatorship was established, it is conceivable she just did not know.

My question is this: is it possible that Spears did not have the right to counsel of her own choice to provide her with a voice over her own future?

To get our terminology straight, what is called a conservatorship in California is a guardianship in Ohio. It is a legal arrangement

where someone else makes personal and financial decisions for another. Guardianship is used to protect someone who cannot care for herself or her property and results in a guardian being appointed to make important decisions.

I wanted to approach my question from an Ohio perspective. What is the answer from an Ohio standpoint? How could Spears have gotten her own attorney in Ohio and challenged her situation? Let's pretend Spears is an Ohio resident subject to Ohio law.

In full disclosure, since my role in the *McQueen* case, my practice has largely been on the other side of the issue representing guardians and potential guardians. I even have the honor of currently serving as the guardian for two people.

The issues around whether a guardian is needed, and how restrictive a guardianship should be, are often tough issues. On one side of the coin is a legitimate desire to protect a loved one from harm; on the other side is protecting a person's autonomy. What should not be at issue is ensuring that a person

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Hamilton County Law Library

Hamilton County
Courthouse
1000 Main Street
Room 601
Cincinnati, OH 45202
T:513.946.5300
F:513.946.5264

<http://lawlibrary.hamilton-co.org>

M-F 7am-4pm

Tech Tip: Access to room reservations using our QR code by Julie Koehne, Systems Librarian

Tired of juggling your notebook and talking to your clients in noisy courtroom hallways? Need a quiet place for a phone call or Zoom connection? Any County employee or Law Library subscriber may reserve a Law Library conference room for a few minutes or an entire day.

You may reserve a library room by logging into our website, scanning our QR code or calling us at 946-5300. We have rooms available for groups of 1 to 30 people. We have laptops and large monitors available to watch evidence videos or present to a group of people.



Use your phone to scan the following QR code which takes you to:

<https://lawlibrary.hamiltoncountyohio.gov/services/reserve-a-room/>



You must be logged in to reserve a room.

Reserve a Room

You must be logged into the website to reserve a room.

Log In

Username

Password

Log In

Remember Me

Each conference room has its own calendar.

Thank you!

As we head into a busy time of year, full of back to school happenings, holidays, upcoming subscriber renewals (for us!) and, of course, a looming CLE reporting deadline for many of you, we just want to pause and say thank you to all of our subscribers. It has been a tumultuous year, and we're happy to provide you a calming oasis of quiet and coffee. We hope to ease the chaos a bit by helping you out with your legal research and providing you with those invaluable CLE credits. Thank you for being our subscribers! Let us know how we can help you out this time of year. Or any time!

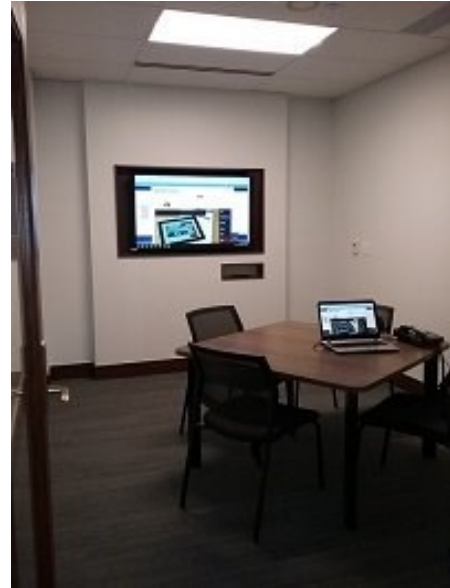


WiFi

In case you missed it - WiFi access for attorneys has improved over the past few months. There is currently an open public WiFi network available on the first floor and in the Law Library named "Courthouse Public" that does not require a password to connect. However, attorneys may be eligible to use a separate courthouse network that requires a password, providing an extra layer of security. If you'd like more information about this, please feel free to contact us at reference@cms.hamilton-co.org.

Law Library Board Meeting

The Hamilton County Law Library Resources Board will next meet on Wednesday, October 6 at 12pm. Meetings of the Hamilton County Law Library Resources Board are open to the public. The meeting will be held in the Robert S. Kraft Boardroom in the Law Library.



Conference Rooms

Our Law Library conference rooms are a perfect place to meet with clients, attend Zoom hearings, take phone calls and conduct your research. We now have 8 reservable spaces, including 3 conference rooms in our newly updated State Room, 4 in our Main Room and our expanded boardroom for larger meetings. All rooms include a phone and WiFi access, and several include computers and large screens for viewing videos or conducting video conferences. For any room without a computer, subscribers can always connect their personal devices to WiFi **-OR-** check out a Law Library laptop for in-library use. Feel free to peruse the details of what each room offers at our room reservations [page](#). If you're interested in making a reservation to secure your preferred time in your preferred space you can do so online at that page, on-site using a QR code (see Julie's Tech Tip!), or by calling (946-5300) or [emailing](#) us during business hours.

who may be placed under a guardianship has a voice in that process.

To have that voice, either at the initial stages of establishing a guardianship or during a later review, it is critical to provide legal counsel of the person's own choice. However, from an Ohio and U.S. Constitutional standpoint, Spears would not have a right to have independent counsel of her choice, even though so much is at stake for her, including her liberty and control of her fortune. Instead, knowing that so much autonomy is lost under guardianship, the Ohio legislature gave her important statutory rights.

These rights include initially to have counsel *of her choice* appointed to represent her even before a guardianship goes into effect. [iii] But, what about later?

Ohio law provides Spears with a means of getting her day in court, called a review hearing. All Spears has to do is to get a "writing" to the court. She has that right as long as at least 120 days have passed since the initial appointment and she has not had another review hearing within the past year. [iv] Then, it is the court's job to set a hearing.

Under the *McQueen* decision, Spears would have all of the rights that attended the initial hearing. She would have the right to present evidence and witnesses including independent medical or psychological evidence. In contrast, her guardian (in this case her father) has the evidentiary burden to show that a guardianship is still needed. Her father would have to meet this burden by a high standard of proof called clear and convincing evidence. He would also have to show there is no lesser restrictive alternative to guardianship. Lesser restrictive alternatives might include a voluntary arrangement (confusingly called a conservatorship in Ohio) or the possible appointment of agents to act on Spears' behalf with regard to her healthcare or finances. After the hearing, the court would either end or continue the guardianship. Sometimes the hearing results in changes in who is required to act or in how the guardian behaves, even if the guardianship continues. Sometimes the court will appoint a new guardian.

One question frequently comes up as to

how can someone who has been determined not to be able to make financial decisions select her own counsel. To this point, all of the rights the person had before she was placed under guardianship are in effect. That includes the right to choose her own attorney. [v]

I offer one caveat to the attorney willing to boldly and independently step in for Spears. An attorney who takes that representation on does so at that lawyer's own risk. Probate courts in Ohio have broad discretion whether to award reasonable attorney's fees if the person remains under guardianship. [vi]

While I am not siding with the #FreeBritney crowd, nor in any way opposed to her efforts, I side squarely on the side of her getting her day in court, with an independent lawyer of her choice. So instead of #FreeBritney, how about #HerOwnLawyerForBritney as the newest hash tag?

[i] In *State ex rel McQueen*, 135 Ohio St.3d 291, 2013-Ohio-65.

[ii] See <https://www.rollingstone.com/music/music-news/britney-spears-conservatorship-timeline-1193156/>

[iii] Ohio Revised Code § 2111.02(C)(7)(a).

[iv] Ohio Revised Code § 2111.49(C).

[v] The Ohio Third District Court of Appeals decision in *In re Guardianship of Carpenter*, 66 N.E.3d 272, 2016-Ohio-3389, confirms a person's right to choose her own counsel during a review hearing

[vi] See Rule 71 of the Rules of Superin-

The logo for Ulmer, featuring the name "Ulmer" in a bold, sans-serif font. A horizontal line is positioned below the "U". A registered trademark symbol (®) is located to the upper right of the "er".

John R. Harrison serves as Counsel at Ulmer & Berne LLP where he focuses on protecting the assets of seniors and people with special needs. He works with families to develop estate plans, protect their wealth, and ensure their wishes are fulfilled over the long-term, including serving as trustee or guardian when family cannot fill that important role. He also helps his clients with probate and trust litigation, and the maintenance of public benefits. He can be reached at jharrison@ulmer.com.



Law Library Bookstore

As the Law Library weeds the collection, pulling superseded legal materials in accordance with our collection development policy, we occasionally place items for sale in our Law Library bookstore. We choose materials for this bookstore that may be of particular interest to our patrons, and we're currently in the process of re-stocking it with a treasure trove of books. This is located on the shelves in the copy room near the reference desk. Please call at 513-946-5300 or stop by to see what's available! Items that don't make it to the Law Library bookstore are usually sold on the county auction [site](#), so please feel free to browse there as well.



Book Club

The Hamilton County Law Library is excited to bring you the first meeting of the Hamilton County Law Library Book Club.

The meeting is at 12:00 on Friday, September 17, 2021, via Zoom.

In honor of Constitution Day, we are going to kick off the discussion by highlighting some of the popular and best-selling titles we have in our collection, such as *How to Read the Constitution and Why*, *What the Constitution Means to Me*, *Sisters in Law*, and *A Lawyer Looks at the Constitution*.

For this first meeting, there is no pressure to have read ahead, and if you want to discuss the Preamble, because you memorized it for 5th grade, that is also perfect.

The founders of our book club (those who attend on the 17th) will be shaping the future content and discussions.

We look forward to seeing you on the 17th!

Topical Updates

We are excited to announce the new design of the Topical Updates for 2021. If you have not signed up before and would like to start receiving substantive bi-weekly updates in one or more practice areas, please visit the topical updates page on our website to sign up. You can select from the following areas of law:

- Criminal
- Employment
- Estates and Trusts
- Family Law
- Intellectual Property
- Pension Benefits
- Real Estate
- Tax
- The Supreme Court & Con Law
- Torts

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to six weeks at a time

Access to extensive legal information databases from the Law Library, including Westlaw, Wolters Kluwer Cheetah™, Bloomberg Law®, Overdrive e-books, HeinOnline, and Loislaw treatises

Wireless network throughout the Law Library

Polycom videoconferencing

Eight meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

CLE seminars throughout the year, on legal research and substantive topics

Subscribers' lounge, magazines, daily newspapers, and coffee

Bi-weekly news alerts by practice area

Discounted rates for photocopying

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/LOISLaw treatises, HeinOnline (for under 50 attorney firms), EBSCOhost, and Wolters Kluwer Cheetah™

Upcoming CLEs—Live Interactive Webinars

Friday, September 24, 2021, 12-1 PM

Hamilton County Municipal Court Update

Presenter: Hon. Josh Berkowitz

1.0 General credit in OH and KY



CLEs on Demand

The Hamilton County Law Library is proud to announce that the following self study CLEs are available in our on-demand library:

Elder Abuse Awareness (1.0 general hour in OH)

Medicaid Planning (1.0 general hour in OH)

Complex Appeals in Ohio (1.0 general hour OH)

Fastcase 7 (1.0 general hour in OH)

Mediation (1.0 general hour in OH)

2020 Employment Cases in the US Supreme Court (1.0 general hour in OH)

Trademark & Copyright Law in 60 Minutes (1.0 general hour in OH)

CHANGE Court (1.0 general hour in OH)

Legal Issues & COVID-19 (1.5 general hours in OH)

What Does Stress Have to Do With it? (2.5 hours professional conduct in OH)

Probate Law Resources

Law Library subscribers have access to a variety of Probate Law Resources, including those listed below. If you have questions about these resources, contact the reference staff at reference@cms.hamilton-co.org or 513.946.5300.

Addams and Hosford's Ohio probate practice and procedure, including the law of wills and administration of estates, with forms and journal entries.

KFO144 .A92 1961

Addams and Hosford's Ohio probate practice and procedure, including the law of wills and administration of estates, with forms, outlines of procedure, and tax materials

KFO144 .A92 1972

Anderson's Ohio probate practice and procedure

KFO144 .M333

Avoiding probate in Ohio

KFO144.Z9 M871

Basics of estate administration

KFO147 .B37 2019

Estate planning basics

KF750.Z9 C585 2013

Kentucky probate laws and rules annotated Including probate forms, estate tax forms, and intestate succession charts.

KFK1344 .A3 2017

The Marvin R. Pliskin advanced probate and estate planning seminar

KFO144 .A934 2019

Merrick-Rippner probate laws & rules annotated

KFO144 .M43 2010S

Probate litigation

KFO144.A75 P76 2019

Probate practice and procedure

KFK1280 .K4 [v. 1-2]

The probate process from start to finish [in Ohio]

KFO144.A25 P76 2015

Online Resources

EBSCO

8 Ways to Avoid Probate
Estate Planning Basics

Fastcase

Estate Planning Law Library

HeinOnline

Probate and Property

Overdrive

Anderson's Ohio Probate Practice and Procedure

Henry's Indiana Probate Law and Practice
Ohio Probate

Westlaw

Merrick-Rippner Probate Law

Probate Law Journal of Ohio

Probate Practice and Procedure—Kentucky
Practice Series

Upcoming Events:

Monday, September 6, 2021: Library Closed, Labor Day

Friday, September 17, 2021: Constitution Day; HCLL Book Club meeting, 12 pm (on ZOOM)

Friday, September 24, 2021, 12-1 CLE: Municipal Court Update (Live interactive Webinar)



September 2021 Law Library Newsletter

- Tech tip: Access Room Reservations with a QR Code
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INSIDE THIS MONTH

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